DUTY TO ACCOMMODATE STUDENTS WITH DISABILITIES

in post-secondary educational institutions

Alberta Human Rights and Citizenship Commission

INTERPRETIVE BULLETIN

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The *Human Rights, Citizenship and Multiculturalism Act* protects individuals in Alberta from discrimination. The Alberta Human Rights and Citizenship Commission is responsible for human rights legislation in Alberta. The Commission has written this publication to explain how post-secondary educational institutions have a duty to accommodate students with disabilities. The information presented here offers general guidelines. If you have questions about a specific situation related to the duty to accommodate, please contact the Commission. See page 28 for contact information.

Today the leading method for ensuring that persons with disabilities have equal access to post-secondary education is through a process called accommodation.

The Commission developed this publication in consultation with an advisory committee that included students with disabilities, disability service providers from various educational institutions, and representatives of community organizations that serve persons with disabilities. In addition, various individuals who work at post-secondary educational institutions in Alberta reviewed a draft of this publication. The Commission is grateful for the assistance the advisory committee and other individuals provided by posing questions related to accommodation, reviewing drafts for clarity, and providing input to the communications plan for the publication.

Introduction

Post-secondary education is the gateway to the workplace and community for most Canadians. It is essential that post-secondary education be accessible to all members of our community, including persons with disabilities. Historically, persons with disabilities have not been able to participate fully in post-secondary education. Today the leading method for ensuring that persons with disabilities have equal access to post-secondary education is through a process called **accommodation**.

In this publication, we use the term disability service provider. The job of the disability service provider at a post-secondary educational institution includes:

- helping students with disabilities to develop appropriate accommodation plans
- acting as a resource for faculty, instructors, staff and others at the educational institution who need information about appropriate accommodation and documentation

Some post-secondary institutions do not have a designated disability service provider. In these cases, students may want to consult with the institution's human rights office, the student ombudsperson, or the dean of their faculty.

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Accommodation is the process of making alterations to the delivery of services so that those services become accessible to more people, including people with disabilities. Accommodation has allowed many talented persons with disabilities to make major contributions to life in Canada and around the world.

Accommodation does **not**:

1. require that post-secondary institutions lower academic or non-academic standards to accommodate students with disabilities.
2. relieve the student of the responsibility to develop the essential skills and competencies expected of all students.

This publication provides information about the duty to accommodate students with physical and mental disabilities so they can participate in post-secondary education.

Physical and mental disabilities include but are not limited to:

- hearing disabilities
- mobility disabilities
- psychological and psychiatric disabilities
- vision disabilities
- learning disabilities
- neurological disabilities
- disabilities related to chronic health problems
- disabilities as a result of serious illnesses such as cancer
- developmental disabilities

The duty to accommodate applies to all students. For example, there are a number of students with developmental disabilities who, with accommodation, are participating successfully in the post-secondary education environment. This accommodation can involve students auditing courses or selectively participating in a program. There are programs and courses where it will not be possible to accommodate students with developmental disabilities.

The *Act* covers services provided by the post-secondary education sector in section 4. It says that no person shall:

(a) deny to any person or class of persons any goods, services, accommodation or facilities customarily available to the public, or

(b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income or family status of that person or class of persons or of any other person or class of persons. (Sexual orientation has also been "read in" to the Act as a protected ground.)

The post-secondary education sector includes universities, colleges and other institutions that provide educational services to students. These include but are not limited to:

- universities
- technical institutes
- English as a second language schools
- continuing education facilities
- community colleges
- private sector training schools
- trade schools
- adult education and upgrading schools

The information in this publication applies to students with disabilities who access services and to the persons who provide those services in the educational environment, including faculty, administrators, student services staff, and facilities management staff. The services include but are not limited to:

- course work
- practicum and clinical placements
- co-op placements
- graduate internships
- library services
- athletic services
- school teams such as the debating team and swimming team
- cafeteria services
- parking and transportation services
- residences
- computing services
- health services
- counselling services
- affiliated services, for example, the student union and student newspaper
- student clubs, for example, the French club and the Chemistry Students' Society
- campus events
- campus orientation

This bulletin will:

- increase understanding of what accommodation means
- increase awareness about the duty to accommodate
- assist in the development of effective policies and procedures
- assist in the development of reasonable accommodation strategies
- promote communication between students and the education sector about accommodation
- promote a leadership role for the education sector in the area of accommodation
- promote shared responsibility for accommodation between students and the education sector

What is accommodation?

The *Act* recognizes that all persons are equal in dignity, rights and responsibilities when it comes to provision of services available to the public. The process for ensuring all persons are treated equally is called accommodation.

Accommodation of students with disabilities involves activities like making adjustments or alternative arrangements in the educational environment to ensure it does not have a discriminatory effect on a student because of the student's disabilities. The educational environment includes but is not limited to:

- the people who provide services, for example, the faculty
- institutional policies such as admissions, attendance, or graduation requirements
- campus facilities such as classrooms and laboratories
- equipment such as computers

In educational environments, the goal of accommodating students with disabilities is to ensure full participation in all aspects of their educational experience through:

Accommodation does not require that post-secondary institutions lower academic or non-academic standards to accommodate students with disabilities.

- administrators and faculty who are knowledgeable and supportive of accommodation
- policies and standards that include the responsibility for accommodation
- accessible facilities
- flexible course delivery formats
- flexible evaluation formats such as exams, papers and presentations
- individual services (for example, interpreters and note takers)
- services to help students negotiate accommodations
- an appeal process to challenge decisions denying accommodation
- flexible entrance, attendance and graduation requirements
- practicum and co-op partners who are knowledgeable and supportive about accommodating students with disabilities

Accommodation applies to both individual students and groups of students. For an individual student, accommodation **may** require a level of customization for each individual student. For example, a student with a specific anxiety disorder may need to write exams in an empty classroom. For groups of students, accommodation may require change across the system. For example, there must be enough laboratory space set up to accommodate students with mobility disabilities, for example, students in wheelchairs.

Accommodation does not require that post-secondary institutions lower academic or non-academic standards to accommodate students with disabilities. Accommodation does not relieve the student of their responsibility to develop the essential skills and competencies expected of all students.

How much accommodation is required?

The Supreme Court of Canada has ruled that where the educational environment has a discriminatory effect on students with disabilities, the post-secondary institution is required to provide accommodation up to the point of **undue hardship**. The undue hardship standard is a very high standard, and as a result, in most situations, post-secondary institutions will be required to provide some accommodation. In these situations, post-secondary institutions are required to provide accommodation that overcomes the discriminatory effect but are not required to choose the most expensive or comprehensive level of accommodation. For example, providing instructor's notes to a student with a hearing disability may be enough to accommodate the student even though the student may prefer a sign language interpreter.

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In some situations, an element of the educational environment may have a discriminatory effect but is considered **reasonable and justifiable**, and any attempt to accommodate students with disabilities will result in an undue hardship for the post-secondary institution. For example, a requirement that all students in an electrical technician's program be tested for colour blindness prior to admission to the program may be reasonable and justifiable. Operating the program without this admissions policy may be an undue hardship for the program and institution because a student who is unable to distinguish certain colours may not be able to perform the duties of an electrical technician.

How does a post-secondary institution determine if a discriminatory level of service is reasonable and justifiable?

The Supreme Court of Canada has developed a test for determining whether policies, rules and standards that result in a discriminatory level of service are reasonable and justifiable. This test:

1. can be used to determine the feasibility of accommodating an individual student or group of students with disabilities.
2. is useful for auditing the elements of the educational environment that discriminate against students with disabilities to determine whether those elements are reasonable and justifiable.

The Supreme Court of Canada test has three parts. To be considered reasonable and justifiable, a discriminatory level of service must meet all three parts of the test, which are described below.

1. **Is the policy, rule or standard rationally connected to its objective?**
   - What is the purpose of the policy, rule or standard—safety, efficiency, other?
   - Is the policy, rule or standard a logical way to meet that purpose?
2. **Did the post-secondary institution adopt the policy, rule or standard with an honest and good-faith belief that the policy was necessary to accomplish its service-related purpose?**
   - What were the circumstances surrounding the adoption of the policy, rule or standard?
   - When was the policy, rule or standard created, by whom, and why?
   - What other considerations were included in the development of the policy, rule or standard?
3. **Is the policy, rule or standard reasonably necessary for the post-secondary institution to accomplish its purpose?**
   - Is the policy based on facts or unsupported assumptions?
   - Does the policy treat some groups of students more harshly than others?
   - Has the policy been designed to minimize its discriminatory effect?
   - Has the post-secondary institution considered alternatives, such as individual assessment?
   - Would accommodation amount to undue hardship?

Factors that may amount to undue hardship include:

1. **Financial cost that hurts the viability of the service, program or institution**
   To be considered an undue hardship, the financial cost of an accommodation must amount to a substantial part of the institution's overall budget. The larger the institution, the less likely it is that the financial cost of accommodation will amount to undue hardship. The financial cost of individual accommodation rarely reaches the point of undue hardship.
2. **Students cannot meet the requirements for entering or completing a program**
   The institution will have to demonstrate that the requirements and standards are necessary for entering or completing a program.
3. **Significant interference with the rights of other students**
   The institution will have to demonstrate that the accommodation would result in essential elements of a service or a program not being offered to other students as a result of accommodating an individual or group of students.

4. **Health and safety concerns for the student being accommodated or for other students or service providers**
   The institution will not only have to reliably identify and measure the risks to health and safety, but also determine who bears the risk. Risk that is limited to the person being accommodated often does not amount to an undue hardship, whereas risk to other persons may. Safety and health risks that contravene legally required occupational health and safety and workers' compensation requirements may be considered an undue hardship.

   In many cases, accommodation measures are simple and affordable and do not create undue hardship.

Responsibilities in the accommodation process

Both the student with a disability and the post-secondary institution have rights and responsibilities in the accommodation process. The most effective accommodation measures are a result of cooperation and clear communication between these parties.

Responsibilities of the student seeking accommodation

Plan before you ask for accommodation

1. Review the institution's policy for accommodating students with disabilities.
2. At the earliest point possible, decide whether to disclose that you have a disability that requires accommodation.
3. Think about the kind of accommodation you require.
4. Develop a set of options for accommodating your **specific** disability. This may include examples of accommodations that you or others have used or attempted in the past.
5. Have research and resources available to help the accommodating person or institution put the accommodation in place.
6. Be prepared to support your request for accommodation with reasonable evidence, for example, written medical information from your doctor or specialist.
7. Keep a written record of the efforts that you make to receive accommodation.

Make your request

1. Make an appointment to discuss your accommodation requirements with the disability service provider or person designated by the institution to coordinate accommodation of students with disabilities.
2. Always put your request in writing if your accommodation requirements are extensive.
3. Give the disability service provider as much lead time as possible to arrange the accommodation as it often takes several months to arrange accommodation. Keep in mind that the more complicated the accommodation, the more advance notice should be provided.
4. Request a second appointment, and put your request in writing if you were unsuccessful in setting up your accommodation through your initial appointment.
5. If you are still unsuccessful, see the institution's human rights advisor or student ombudsperson to find out what on-campus options exist to help you resolve the matter. You can also contact the Alberta Human Rights and Citizenship Commission to inquire about making a complaint under the *Human Rights, Citizenship and Multiculturalism Act*. You must make a complaint within one year after the date that the alleged discrimination took place.

Always put your request in writing if your accommodation requirements are extensive.

Develop an accommodation plan

1. Seek the assistance of the disability service provider.
2. Be aware that you may have to disclose confidential information about your disability to people who will arrange the accommodation. Disclosure may be essential for the accommodation to be arranged.
3. Put the accommodation plan in writing.
4. Follow the accommodation plan.
5. Inform the service provider as soon as possible if the accommodation plan needs to be modified.

Review and revise the accommodation plan

1. Review the accommodation plan with the disability service provider to monitor its success. Do this every couple of weeks for the first month, and then once per term. Revise the plan if necessary.
2. Tell the disability service provider if your need for accommodation ends.

Responsibilities of the post-secondary institution

Prepare, plan and train for accommodation

1. Have an organization-wide accommodation policy. Ensure that the policy:
   - addresses the accommodation of disabilities
   - indicates that all of the institution's policies including rules, standards and procedures must include a provision for accommodating students to the point of undue hardship
   - includes a procedure for determining the appropriate level of accommodation
   - includes a procedure for requesting accommodations
2. Ensure that there is a person responsible for administering the accommodation policy who has an expert knowledge of policy and issues related to accommodation.
3. Ensure that staff and students have a working knowledge of the accommodation policy and procedure.
4. Review rules and standards developed in the past to see whether they meet the Supreme Court of Canada test for determining if a rule or standard is reasonable and justifiable (discussed at pages 6 and 7 of this bulletin).
5. Ensure that you use the Supreme Court of Canada test to develop new policies, rules, standards, programs and facilities.

Respond to requests for accommodation

1. Once the institution receives a request for accommodation, the disability service provider should arrange a meeting with the student as soon as possible since most activities in the educational environment are time-sensitive.
2. Document the entire process.
3. Listen to and consider the needs of the student requesting accommodation.
4. Thoroughly consider the evidence from professionals that indicates accommodation is required. Seek advice from experts such as medical specialists, learning specialists, lawyers and Commission staff.

Develop accommodation plans

1. Take a flexible approach to considering and developing options. Consider a broad range of possibilities.
2. Develop several standard ways of accommodating common disability concerns, for example, extended time for writing tests.
3. Explore how the student has been successfully accommodated in the past. A lack of history does not absolve the institution from its current duty to accommodate.
4. Work with the student to develop a written accommodation plan.
5. Involve the instructor and others in the accommodation plan. Ensure that the parties involved are integral to the process, and involve them only after you receive permission from the student.

Review and revise the accommodation plan

1. Follow up to ensure that the accommodation meets the needs of the person seeking accommodation.
2. Review and revise the accommodation plan if circumstances or needs change.

Inform others when denying a request

1. Inform the disability service provider that a request for accommodation has been denied.
2. Provide written reasons for denying a student's request for accommodation. Explain why the accommodation would cause undue hardship.
3. Inform the student of how to appeal the denial of a request for accommodation. Be sure to provide the student with information about all available appeal methods.

Questions and answers about the duty to accommodate students with disabilities

1. **What resources are available for students with disabilities to help them get reasonable accommodation?**

   Most institutions have a disability service provider's office that will have a full listing of resources available to students, including the school's accommodation policy. Other resources include the institution's human rights advisor, student ombudsperson, or the dean of the student's faculty. Students may also wish to contact an advocacy organization that advocates on behalf of persons with disabilities. The disability service provider's office or the other listed resources may also be able to refer students to agencies and programs that can provide funding for accommodation.

2. **How much notice do students need to provide in order to be accommodated?**

   Students should provide as much notice as possible. The amount of notice required to put an accommodation in place depends on the nature and uniqueness of the accommodation that the student is seeking. An accommodation that was regularly granted in a standardized fashion would require little notice. For example, students with dyslexia may routinely require more time to write a test than other students. However, a request that required a unique approach or extensive resources and planning to implement would require much more lead time. An example would be setting up the laboratory portion of a botany course for a student with a disability related to vision.

3. **What documentation of disability is a student required to provide?**

   Students who require accommodation should provide enough expert documentation to facilitate accommodation. In most cases, the student will have to provide documentation from an expert in the area of the specific disability such as a chartered educational psychologist for learning disabilities; a psychiatrist for psychiatric disabilities; an audiologist for hearing disabilities; and an ophthalmologist for visual disabilities. Where the disability is not obvious or may be unique, the student should provide as much expert assessment documentation as they have at the time of the request and be prepared to collect and provide more.

4. **What if a student is afraid to disclose their disability because they fear discrimination?**

   Students often do not want to disclose that they have a disability because they fear that they will suffer discrimination as a result of the disclosure. At the same time, it is very difficult to accommodate students with disabilities if the student does not disclose the nature of the disability. While it is clearly a difficult decision, students who know they require accommodation should disclose their disability as soon as they realize they will require accommodation.

5. **What should a student do if a faculty member does not understand that there is a duty to accommodate?**

   The student should encourage the instructor to contact the disability service provider's office to find out more about the duty to accommodate. The disability service provider's office may be able to locate resources to facilitate or support a successful accommodation for the student. If the institution does not have a disability service provider, the student may contact the institution's human rights office, the student ombudsperson, or the dean of their faculty.

6. **What should a student do if a faculty member has refused to accommodate a disability?**

   The student should contact the disability service provider's office. The disability service provider will be able to advise the student on options to obtain the necessary accommodation. The disability service provider may contact the instructor to help resolve the matter. If the institution does not have a disability service provider, the student may contact the institution's human rights office, the student ombudsperson, or the dean of their faculty.

7. **What can a student do about a lack of access on campus to services such as the cafeteria, residences, pubs, bookstore, library, recreational facilities or health clinic?**

   The student should check the institution's calendar or Web site to determine where to make a request for appropriate access to campus services. In the absence of a designated person, contact the institution's human rights advisor. The human rights advisor will be able to direct the student to the person or office responsible for the specific service.

   The student should make a written request to the person responsible for the specific service for appropriate access and request a written reply. If the appropriate access is not provided, the student should contact the institution's human rights advisor to find out what on-campus options the student has to try to resolve the matter. The student can also contact an advocacy group that represents the interests of students who are affected. The student can also contact the Alberta Human Rights and Citizenship Commission to inquire about making a complaint under the *Human Rights, Citizenship and Multiculturalism Act*. The student must make a complaint within one year after the date that the alleged discrimination took place.

8. **What can a student do if the institution has refused to accommodate a disability?**

   The student should see the institution's human rights advisor or student ombudsperson to find out what on-campus options the student has to try to resolve the matter. The student can also contact the Alberta Human Rights and Citizenship Commission to inquire about making a complaint under the *Act*. The complaint must be made within one year after the date that the alleged discrimination took place.

9. **What duty does the institution have to make the course material accessible?**

   The institution must make the course material as accessible as possible. This may include:

   - providing material in an accessible format on Web sites
   - making instructor's notes or projected presentations (for example, Power Point presentations) available in advance
   - providing options or support to audio record the lectures

   In addition, there must be a procedure in place for developing alternate course materials to accommodate students with disabilities. It is mandatory for faculty to explain to students the accommodation procedure regarding course materials at the start of each course. In most cases, producing accessible or alternate course material will not result in an undue hardship for the instructor or educational institution.

10. What duty does an institution have to provide accommodation during the exam process?

The institution's exam policy must include a procedure for accommodating students with disabilities. The procedure should:

- set out a protocol for students and instructors to follow
- include several accepted ways to accommodate students with disabilities during testing. There may be instances where a different or unique accommodation is required, depending on an individual's need. As with any accommodation, both the student and the educator have a duty to broadly explore and document the various options.

Accommodation of students during testing would cause undue hardship for the institution when the testing no longer reasonably assessed the student's ability to meet essential requirements of the course or program.

11. What duty do institutions with attendance policies have to accommodate students whose disabilities cause them to be absent more than the policy allows?

The attendance policy must include a procedure for accommodating those students. The procedure should set out a method for identifying alternative ways for students to meet the objectives of the course that are being enforced through the attendance policy. Attendance policies may be strictly enforced for students with disabilities where it has been determined that a specific level of attendance is the only way to meet the requirements of the course.

12. Does the institution have the right to set criteria to determine who qualifies for tutorial support or other academic support?

The institution can set criteria for determining who qualifies for accommodation services. Criteria should help to ensure that students with a wide variety of disabilities receive equivalent access to accommodation services. However, criteria must be flexible enough to accommodate students with unique requirements.

13. What are the guidelines for confidentiality in the accommodation process?

Disability service providers must keep the details of the student's disability confidential. The disability service provider will provide other staff and faculty with a letter describing only the details of the accommodation required by the student. The student seeking accommodation can choose to disclose additional information about their disability. Faculty must keep all information about the student and accommodation confidential.

14. How do you determine appropriate accommodations for students with mental disabilities, especially in cases where the only information is confirmation of the diagnosis?

Often the disability itself makes it difficult for the student to participate in the design and implementation of the accommodation. In this case, it may be helpful for the student to be connected with a student advocate or disability advocate during the accommodation process.

There is often not enough information to design an appropriate accommodation. It may be helpful to:

- contact the diagnosing professional for more information
- review what types of accommodation have been used in the past and determine whether they can be used or adapted in this instance
- seek input from someone who is familiar with the challenges faced by someone with the diagnosis in question

15. Who is responsible for facilitating the accommodations in clinical and practicum placements: the institution or the practicum provider?

The institution is responsible for facilitating accommodation in clinical and practicum placements. The organization providing the placement is viewed as an agent of the institution for the purposes of providing the service. **If the placement is paid, both the institution and practicum provider will be responsible for accommodation.**

16. How do safety considerations affect the duty to accommodate in clinical and practicum placements?

Institutions can deny a student with a disability a clinical or practicum placement because of concerns about safety. The institution must assess the risk to safety posed by an individual student. The risk to safety must outweigh the negative impact of discrimination. The institution must also consider ways to reduce risk or consider other placements that present less of a safety risk.

The institution will not only have to identify and measure the risks to safety, but also determine who bears the risk. Risk that is limited to the person being accommodated often does not amount to an undue hardship, whereas risk to other persons may. Safety risks that contravene statutory occupational health and safety and workers' compensation requirements may not be considered reasonable and justifiable.

17. How do the requirements of third-party licensing or professional bodies affect the provision of academic accommodations?

Both the institution and the licensing or professional body are responsible to reasonably accommodate the student. It is unlikely that a requirement set by a licensing or professional body will result in an undue hardship for the educational institution. The licensing or professional body will also be

required to demonstrate that their rules and standards are reasonable and justifiable. (See the reasonable and justifiable test on page 6 of this bulletin.)

Both institutions and licensing bodies need to realize that accommodating persons with disabilities does not result in lower quality graduates or inferior professionals.

It is in everyone's best interest for institutions to inform students who seek accommodation about the potential issues they may face when applying for a professional licence. The institution should also discuss potential accommodations with the licensing body so that the accommodation can be designed in a way that reduces potential conflict with the licensing body's rules and standards.

Some examples of accommodations in the post-secondary educational environment

It is important that the institution and the student work together to arrive at accommodations that are appropriate and formally documented.

Each person's need for accommodation will be unique. It is important that the institution and the student work together to arrive at accommodations that are appropriate and formally documented. The following examples will give you an idea of disability-related accommodations that have worked for some students, and that students and service providers have recommended.

Getting accommodation

- Advice to students with disabilities about how to get accommodation
- Advice to faculty and other staff about how to provide accommodation
- Assistance to students to complete funding applications for accommodation costs
- Adaptive technology assessments and training

Course work and exams

- Text books and course materials in alternate format including large print, audio tape, electronic text, and Braille
- Sign language interpreters and CART (Communication Access Real Time Translation) in classes, laboratories, practicums, field placements, meetings with instructors, etc.
- Extended library borrowing privileges

- On-line access to university or college publications
- Accessible Web sites
- Instructor's notes on the Internet
- Photocopies of overheads and notes for Power Point presentations given ahead of time
- Note takers
- Exam accommodations, including:
    - Scribes and/or readers
    - Distraction-free test areas
    - Extended time
    - Alternate format including large print, Braille, and audio tape
    - Computers and adaptive software
    - Ergonomic set-up
    - Appropriate lighting
    - Spell checking software program as warranted
    - Medical accommodations (for example, stretch breaks and food breaks)

Universal Design in education creates an educational environment that takes into account the needs of students with the widest possible range of abilities in the widest range of situations.

The physical environment

- Appropriate classroom space for those in wheelchairs and furniture for others requiring special seating
- Accessible space close to the front of the lecture theatre
- Modified lighting in classrooms and laboratories when possible
- Accessible way-finding signage with attention to lighting, colour contrast, tactile symbols, font type and size, etc.
- Pay text telephones (TTYs)
- Stairs clearly marked with visible and tactile strips
- Attention to snow and ice removal, especially at curb crossings
- Assistance in getting around campus for students with limited mobility or vision
- Elevators with in-car audible signals, tactile button indicators, hands-free emergency phone
- Accessible leisure-area space (for example, cafeterias, recreation facilities, student lounges)
- Universal design in all facilities including classrooms, laboratories, and student housing (Universal Design in education creates an educational environment that takes into account the needs of students with the widest possible range of abilities in the widest range of situations.)

Legal framework for the duty to accommodate

The duty to accommodate has developed from three main sources

1. Each provincial government as well as the territories and the federal government administer their own human rights legislation. In Alberta, the *Human Rights, Citizenship and Multiculturalism Act*, Section 4, states:
   "No person shall
   (a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or
   (b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public, because of the race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, source of income or family status of that person or class of persons or any other person or class of persons." Sexual orientation has also been "read in" to the *Act*.
2. The *Canadian Charter of Rights and Freedoms* in Section 15 (1) states: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."
3. Case law interprets how the *Act* and *Charter* apply to specific circumstances, including the circumstances of students with mental and physical disabilities in the post-secondary education sector. Reviewing the case law is a good way to see how the duty to accommodate applies to the post-secondary education sector.

Case law

Human rights case law is constantly evolving, based on cases that come before the courts and human rights tribunals. The cases summarized below are important either because of what they say about the duty to accommodate or because they involve the education sector. The cases are listed in alphabetical order and come from a tribunal or one of the levels of court. Where the decisions are available on public Web sites, a URL is provided. The decisions are also published in the various reporters that can be obtained at the Law Society Library at the Court of Queen's Bench of Alberta in Calgary, Drumheller, Edmonton, Fort Macleod, Grande Prairie, Lethbridge, Medicine Hat, Peace River, Red Deer and Wetaskiwin. To contact the Law Society Library nearest you, visit **www.lawlibrary.ab.ca/locations.html** or check your phone book under Government of Alberta, Courts.

1. ***Arnold v. Canadian Human Rights Commission and Social Sciences and Humanities Research Council (1996), 30 C.H.R.R. D/134, Federal Court.*** (Online at **http://reports.fja.gc.ca/fc/src/shtml/1997/pub/v1/1997fca0043.shtml**)

   The complainant has dyslexia. He applied to SSHRC for a doctoral fellowship to continue his studies in law. He was unsuccessful. He alleged that SSHRC's selection and screening criteria failed to recognize the obstacles he faced as a student with a disability, and failed to accommodate him. The complainant did not seek accommodation from his university during his earlier studies because of the stigma associated with making such a request. The Court ruled that SSHRC was responsible for accommodating the complainant even though he had not sought accommodation during his earlier studies.

2. ***(Berg)University of British Columbia v. Berg (1993), 18 C.H.R.R. D/310, Supreme Court of Canada.*** (Online at **www.lexum.umontreal.ca/csc-scc/en/pub/1993/vol2/html/1993scr2_0353.html**)

   The complainant was a student with an above-average academic record in the Master's program in the School of Family and Nutritional Sciences in 1979. She experienced recurring depression and one day wrote " I am dead" on the mirror in the School's washroom. Later the same day, she was frightened by RCMP and security personnel in the hallway and attempted to jump through a plate glass window. When the school moved premises in 1982, the complainant was denied a key to the building, although graduate students were regularly issued keys so that they could use the computer and research facilities after hours. The complainant was also denied a rating sheet required for an application for a hospital internship. The Court restored the original decision of the B.C. Human Rights Council. The Council found that the key and rating sheet formed part of a service customarily available to the public. The Council also found that the University discriminated against the complainant when it denied her a key and rating sheet based on her mental disability.

3. ***(Eaton) Eaton v. Brant County Board of Education [1997] 1 S.C.R. 241; (1996) 31 O.R. (3d) 574 (1996) 142 D.L.R. (4th); 385; 1997, Supreme Court of Canada.*** (Online at **www.lexum.umontreal.ca/csc-scc/en/pub/1997/vol1/html/1997scr1_0241.html**)

   The complainant was 12 years old. She had cerebral palsy and was unable to communicate through speech, sign language or other communication systems. She had disabilities related to vision and mobility. She was an exceptional student. Her parents wanted her placed in a regular classroom. The school board ultimately decided that she should be placed in a special education class. The Court ruled that the school board, in making its decision, had balanced her various educational interests appropriately, had taken into account her special needs, and had not violated her equality rights under Section 15 of the *Charter.* The Court noted that the parents and school board had a continuing obligation to work together to meet the complainant's present and future needs.

4. ***Eldridge v. British Columbia (Attorney General); [1997] 3 S.C.R. 624; [1997] S.C.J. No. 86, Supreme Court of Canada.*** (Online at **www.lexum.umontreal.ca/csc-scc/en/pub/1997/vol3/html/1997scr3_0624.html**)

   The complainants are three deaf individuals who alleged that their equality rights under Section 15 of the *Charter* were violated when the B.C. public health system failed to provide adequate interpreter services for deaf patients in their dealings with doctors and hospitals. The Court ruled that the complainants suffered discrimination because the system failed to ensure that they benefited equally from medical services offered to everyone. In ruling that the government had not accommodated deaf persons to the point of undue hardship, the Court determined that: effective communication was a necessary part of the provision of health care; the cost of accommodating deaf persons was very small compared to the provincial health care budget; and the potential ripple effect of other disadvantaged groups seeking similar interpretive services was not a factor for determining the point of undue hardship.

5. ***(Grismer) British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights) (2000) 36 C.H.R.R. D/129, Supreme Court of Canada.*** (Online at **www.lexum.umontreal.ca/csc-scc/en/pub/1999/vol3/html/1999scr3_0868.html**)

   The complainant had a condition known as homonymous hemianopia (HH), which affected his peripheral vision. The British Columbia Superintendent of Motor Vehicles cancelled the complainant's driver's licence because his vision no longer met the standard of a minimum field of 120 degrees. Certain exceptions to the 120-degree standard were allowed, but individuals with the complainant's condition were never permitted to drive in British Columbia. The complainant reapplied for his licence several times, passing all the tests except field of vision. Motor Vehicles did not allow the complainant to be individually assessed to establish that he was able to compensate for his limited peripheral vision. The complainant alleged that the Superintendent was not providing him with a service that was customarily available to the public because of his disability. The Court applied the Meiorin test (see page 6 of this bulletin for information about the test) and determined that the Superintendent's approach was not reasonable and justifiable. In the course of coming to this conclusion, the Court noted that the Superintendent's approach of never licencing persons with HH did not attempt to minimize the discriminatory impact of its standard. The Court also noted that the Superintendent individually tested persons with the same peripheral vision deficiency that did not have HH.

6. ***Hannaford v. Douglas College (2000), 37 C.H.R.R. D/336, 2000 BCHRT 25, British Columbia Human Rights Tribunal.*** (Online at **www.bchrt.bc.ca/down/decisions_2000/hannaford_v_douglas_college_2000_bchrt_25.pdf**)

   The complainant was enrolled in classes with the goal of becoming a child and youth care counsellor. She claimed to have a visual and reading disability related to Graves disease and a cognitive and learning disability related to a childhood fall. The College provided her with extra time to write her exams and an access aide

who assisted her in obtaining information from the library and organizing her materials. She was also seeing a psychologist and an educational therapist. The complainant informed the College that she did not want any more contact with the educational therapist. In response, the College withdrew all services, saying that the complainant had received more services than she needed based on her marks and what she described as her disability. The complainant alleged that the College withdrew services she needed in order to accommodate her cognitive and learning disability. The Tribunal found that the complainant did not have a cognitive and learning disability or did not inform the College of it. The Tribunal also found that the College had reasonably accommodated the complainant for her reading and visual disability.

7. ***Harris v. Camosun College (2000), 39 C.H.R.R. D/36, 2000 BCHRT 51, British Columbia Human Rights Tribunal.*** (Online at **www.bchrt.bc.ca/down/decisions_2000/harris_v_camosun_college_2000_bchrt__51.pdf**)

   The complainant was enrolled as a student in the Criminology program from 1994 to 1997. She alleged that the College did not accommodate her multiple sensitivities to environmental elements such as paints, varnishes, gas fumes, plastics and carpets. The College repeatedly asked the complainant for documentation of her sensitivities. She provided a letter from an allergy specialist that indicated that she was allergic to cats and house mites. She provided a second letter from a doctor who had no expertise regarding chemical sensitivities. The complainant alleged that the College made unreasonable demands for medical information and that this constituted harassment. The Tribunal found the College's requests for medical information reasonable. The Tribunal also found that the College's requirement that the complainant attend a course in person was reasonable and justifiable because one of the essential elements of this course was interaction with other students. The Tribunal found that the complainant could not satisfy the goals and objectives of the program by having someone tape the class for her.

8. ***Howard v. University of British Columbia (No. 1) (1993), 18 C.H.R.R. D/353, British Columbia Council of Human Rights.*** (No URL available)

   The complainant is profoundly deaf. His native language is American Sign Language. He requested that the university provide him with a sign language interpreter for a number of courses he needed in order to obtain a teaching certificate. The University refused to provide him with the level of interpretive services necessary to complete his teaching certificate. The Council of Human Rights found that a university education was a service customarily available to the public and that sign language interpreters are an accommodation required by deaf students to enable them to use the University's educational services. Finally, the Council concluded that the University failed to accommodate the complainant to the point of undue hardship. The Council agreed that absorbing the cost of the interpreter would have some impact on the University's

budget, but that there was no evidence that providing an interpreter for the complainant would cause more than a minor interference with the operations of the University.

9. ***Justice Institute of British Columbia v. British Columbia (Attorney General) (1999) B.C.J. no. 1571; (1999) 17 Admin. L.R. (3d) 267, British Columbia Supreme Court.*** (Online at **www.canlii.org/bc/cas/bcsc/1999/1999bcsc11073.html**)

   The complainant was a trainee police constable who was removed from training when he performed unsatisfactorily in the course testing. The complainant did not identify himself to his instructors as someone with a learning disability nor did he request accommodation. After his unsatisfactory test performance, he was assessed as having a learning disability. The doctor who completed the complainant's neuropsychological assessment said that if the complainant was able to write exams in a private room and given additional time, he would be able to complete the required training successfully. Even with the assessment information, the Justice Institute continued to refuse to let the complainant carry on in the program. The Court ruled that the complainant had a learning disability that could be accommodated by allowing him to take examinations in an alternate way, such as having more time to write an exam.

10. ***(Matthews) Memorial University of Newfoundland v. Matthews (1994), 22 C.H.R.R. D/384, Newfoundland Supreme Court.*** (No URL available)

    This is an appeal by Memorial University of a Board of Inquiry decision, which found that the Faculty of Medicine harassed the complainant by making negative comments about his stutter in his faculty file and in a letter of reference from the dean. The Board of Inquiry found that some of the comments made by members of the Faculty of Medicine served no reasonable or justifiable purpose regarding his performance as a medical student, and should be removed from his file. The Board of Inquiry also found that the comments constituted harassment. The Court upheld the decision of the Board.

11. ***(Meiorin) British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees Union (B.C.G.S.E.U.) (1999) 35 C.H.R.R D/257, Supreme Court of Canada.*** (Online at **www.lexum.umontreal.ca/csc-scc/en/pub/1999/vol3/html/1999scr3_0003.html**)

    The complainant was a female forest firefighter who had worked successfully in the job for three years. During her employment, the BC Government established an aerobic fitness standard for its forest fire fighters. The complainant failed to run two miles in a fast enough time and was fired for not meeting the fitness standard. The complainant argued that the fitness standard discriminated against women because women generally have a lower aerobic capacity than men. The Court introduced a new test for determining whether an occupational standard such as the aerobic fitness standard was reasonable and justifiable. This test is discussed at page 6 of this bulletin. Using this test, the Court determined that the aerobic fitness standard was not reasonably

justifiable because it set a higher standard than was needed to ensure safety and efficiency. The Court said that if an aerobic fitness standard was necessary for safety and efficiency, it should reflect the differences between men and women. The Court rejected the Government's argument that a negative effect on fire fighter morale caused by lowering of the fitness standard would be an undue hardship.

12. ***Robb v. St. Margaret's School (2003), 45 C.H.R.R. D/276, 2003 BCHRT 4, British Columbia Human Rights Tribunal.*** (Online at **www.bchrt.bc.ca/down/decisions_2003/robb_v_st_margarets_school_2003_bchrt_4.pdf**; also see the corrigendum (correction) at **www.bchrt.bc.ca/down/decisions_2003/robb_corrigendum_bchrt_4.pdf**)

    The complainant was a grade three student enrolled in a private school. She was assessed during her grade three year as having a severe learning disability involving deficits in symbolic processing, nonverbal reasoning and visual-motor co-ordination. The assessor determined that the complainant needed a comprehensive individual education plan, remedial reading instruction, adaptations for reading in the classroom, bypass strategies for writing (for example, scribing and voice dictation), a modified math program, reduced quantity of assigned work, opportunities to advance conceptually, and strategies for management of her attention patterns. Two months later, the school informed the complainant's parents that the complainant would not be able to enrol in the school for the next school year. The Tribunal found that re-enrolment was withheld because of the complainant's learning disability. The Tribunal found that the school's decision to withhold enrolment was made by someone with no expertise in learning disabilities, based on vague criteria and on the advice of staff whom he acknowledged lacked experience in dealing with students with severe learning disabilities. The Tribunal concluded that it would not have been an undue hardship to resolve the situation by less drastic means and that it was discriminatory to deny the complainant enrolment at the school.

13. ***Wignall v. Department of National Revenue (2001), 40 C.H.R.R. D/117, Canadian Human Rights Tribunal.*** (Online at **www.chrt-tcdp.gc.ca/search/view_html.asp?doid=273&lg=_e&isruling=0**)

    The complainant is deaf. The University of Manitoba agreed to provide him with sign language interpreters for classroom lectures during the 1995-96 regular session, free of charge, but requested that the complainant seek out other sources of funding for these services in future. The complainant applied for and received a $3,000 Special Opportunities Grant for Students with Permanent Disabilities from the Government of Canada. He turned these funds over to the University of Manitoba to help defray a portion of the cost of interpreter services. The Tribunal held that the requirement that the grant be included in the complainant's income for tax purposes was not discriminatory.

Important legal principles from the case law

Legal principles from the case law provide direction on a wide range of issues important to the provision of services in the education sector. These are some of the principles that apply:

General duty to accommodate principles

1. The duty to accommodate to the point of undue hardship applies to both direct discrimination and indirect discrimination. See *Meiorin* and *Grismer.*

   Direct discrimination is an exclusion based on characteristics such as disability or race. For example, a policy that denies drivers' licences to all persons with less than 120 degrees of peripheral vision discriminates directly against these persons based on a disability.

   Indirect discrimination results from a policy or practice that appears to treat people equally but results in persons being excluded because of their characteristics. For example, a fire department that requires all firefighters to meet the same fitness standard indirectly discriminates against women firefighters.

2. The Supreme Court of Canada has developed a test to determine whether a discriminatory policy, rule or standard is reasonable and justifiable. To be considered reasonable and justifiable, the rule or standard must meet all parts of the test. The questions to ask when assessing the rule or standard are:
   - Is the policy, rule or standard rationally connected to the provision of the service?
   - Is there an honest and good faith belief that the policy is necessary?
   - Is the policy reasonably necessary?

   See *Meiorin* and *Grismer* and page 6 of this bulletin.

3. All policies must include a process for accommodating persons to the point of undue hardship. The accommodation process must include individual testing of persons who are negatively treated by the policy to see if they can meet the requirements of the policy with reasonable accommodation. See *Meiorin* and *Grismer.*

Education-specific duty to accommodate principles

Jurisdiction

4. The *Act* and *Charter* apply to the provision of all services in the educational setting, including extracurricular services such as those provided by clubs and the students' union. See *Howard* and *Berg*.

5. Students with disabilities have the right to access services and environments generally available to other students in the same course or program. See *Berg*.

Reasonable and justifiable requirements

6. The educational institution may establish the necessary requirements and essential elements of a course or program. If the student does not meet the requirements and/or participate in the essential elements, this would amount to an undue hardship for the institution. See *Harris*.

7. Assessments or evaluations of a student's work must be based on ability or performance and not on the presence of a disability. See *Matthews*.

Responsibility of students and institutions in the accommodation process

8. Students must provide reasonable documentation of their disability if they want to be accommodated. See *Harris* and *Hannaford*.

9. A student's past decision not to disclose a disability does not prevent the possibility of present or future accommodation. See *Arnold*.

10. Educators may be responsible for accommodating a student who has not disclosed a disability where the disability is obvious. See *Justice Institute*.

11. Both the student and educator are responsible for working towards a successful accommodation strategy. See *Eaton* and *Robb*.

12. Educators have a duty to seek professional advice and guidance outside their own area of expertise during an accommodation process. See *Robb*.

13. Educational institutions must demonstrate that they have considered a range of possible accommodations. Documentation of the process and conclusions are required. See *Berg*, *Howard*, and *Robb*.

Determining undue hardship

14. Educational institutions must demonstrate that the benefits of a rule outweigh the costs of reducing the participation of a student with a disability or a group of students with disabilities. See *Eldridge*, *Eaton*, and *Robb*.

15. The point of undue hardship related to cost is only reached where the institution has made a rigorous attempt to estimate the costs of accommodating the student with a disability. Those costs, if incurred, must have a significant negative effect on the viability of the program, service, or organization. See *Howard* and *Eldridge*.

16. The point of undue hardship related to safety is often only reached when:
    - the safety concern is borne by persons other than the person seeking the accommodation **and**
    - the safety hazard outweighs the negative effect that the policy, rule or standard imposes on persons with disabilities.

    See *Grismer.*

Resources

Funding

1. Students with disabilities who qualify for student support can apply for a special grant through **Students Finance.** For more information, visit **www.alis.gov.ab.ca/studentsfinance/main.asp**

   Phone: (780) 427-3722 in Edmonton.
   Toll-free from Alberta locations outside Edmonton, first dial 310-0000.
   Toll-free TTY service for persons who are deaf and hard of hearing:
   1-800-232-7215

2. Students with disabilities may be eligible for funding of accommodations through Alberta Human Resources and Employment, **Disability Related Employment Supports (DRES).** For information, visit **www.gov.ab.ca/hre/dres** or contact the nearest Income and Employment Supports office of AHRE. To find the nearest office, click the Contact Us button on the Web page, or consult your phone book. Look under Government of Alberta, Income and Employment Programs. Or call Service Alberta toll-free at 310-0000. To access toll-free TTY service for persons who are deaf and hard of hearing, call 1-800-232-7215.

3. Students can find out about **federal funding options** by contacting the **Office for Disability Issues**. For more information, visit **www.hrsdc.gc.ca/en/gateways/nav/top_nav/program/odi.shtml**

   To contact the ODI directly, you can:
   - Fax (819) 953-4797
   - Write to Office for Disability Issues
     Suite 100, 25 Eddy Street
     Gatineau, Québec K1A 0M5

   For toll-free access to all Government of Canada general information on programs and services, dial 1-800-622-6232.

References

1. Alberta Human Rights and Citizenship Commission, *Duty to Accommodate* interpretive bulletin, **www.albertahumanrights.ab.ca/publications/Bull_duty_to_accom.asp**
2. Ontario Human Rights Commission 2003 report: *Achieving Barrier-Free Education For Students With Disabilities*, **www.ohrc.on.ca/english/consultations/ed-consultation-report.shtml**
3. Patricia Pardo, *Implementing Academic Accommodation in Field Practicum Settings*, **www.ucalgary.ca/drc/research/pub_acad_accom.pdf**
4. Alberta Committee of Citizens with Disabilities, *Resource Guide for Post-secondary Students with Disabilities*, **www.accd.net/resource_guide.htm**

Other resources

Alberta's **provincial Office for Disability Issues** provides coordination of provincial programs and policies for Albertans with disabilities, without consolidating existing programs. The ODI can refer Albertans to the appropriate disability-related supports and programs.

Phone: (780) 422-1095 in Edmonton.
Toll-free from Alberta locations outside Edmonton: 1-800-272-8841
Toll-free TTY access for persons who are deaf and hard of hearing: 1-800-272-8841
Web site: **www.cd.gov.ab.ca/helping_albertans/odi/index.asp**

For more information

For more information about the duty to accommodate, please call the Commission's confidential inquiry line. A student who thinks that their educational institution is not accommodating their disability can contact the Commission. They may decide to make a human rights complaint to the Commission. There is no fee to make a complaint, and all inquiries are confidential. **The complaint must be made within one year of the alleged incident.**

Contact us

The Alberta Human Rights and Citizenship Commission is an independent commission of the Government of Alberta, which reports through the Ministry of Community Development. Our mandate is to foster equality and reduce discrimination. We provide public information and education programs, and help Albertans resolve human rights complaints.

Northern Regional Office
800 Standard Life Centre
10405 Jasper Avenue
Edmonton, Alberta T5J 4R7
(780) 427-7661 Confidential Inquiry Line
(780) 427-6013 Fax

Southern Regional Office
Suite 310, 525 – 11 Avenue SW
Calgary, Alberta T2R 0C9
(403) 297-6571 Confidential Inquiry Line
(403) 297-6567 Fax

To call toll-free within Alberta, dial 310-0000 and then enter the area code and phone number.

For province-wide free access from a cellular phone, enter *310 (for Rogers-AT&T) or #310 (for Telus).

TTY service for persons who are deaf or hard of hearing
(780) 427-1597 Edmonton
(403) 297-5639 Calgary
1-800-232-7215 Toll-free within Alberta

E-mail humanrights@gov.ab.ca
Web site www.albertahumanrights.ab.ca

Please note: A complaint must be made to the Alberta Human Rights and Citizenship Commission within one year after the alleged incident.

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Duty to accommodate students with disabilities Reader Survey

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Please mail or fax your completed form to:
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Alberta Human Rights and Citizenship Commission
800 Standard Life Centre, 10405 Jasper Avenue, Edmonton, Alberta T5J 4R7
Fax: (780) 422-3563

You can also submit this form electronically from our Web site at
www.albertahumanrights.ab.ca/publications/Bull_duty_to_accom_students.asp